

The Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE

TIMOTHY LINEHAN, on behalf of  
Plaintiff and a class,

Plaintiff,

v.

ALLIANCEONE RECEIVABLES  
MANAGEMENT, INC.,

Defendant.

No. C15-1012-JCC  
(Consolidated Actions)

PLAINTIFFS MOSBY, FOUTZ,  
CORMIER, ERICKSON AND CONROY'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON LIABILITY AS TO  
DEFENDANTS MERCHANTS CREDIT  
CORPORATION, JASON WOEHLE AND  
ERIK BAKKE

NOTED ON MOTION CALENDAR:  
April 21, 2017

**I. RELIEF REQUESTED**

Plaintiffs Theresa Mosby, Rebecca Foutz, Marilynn Cormier, Kelsey Erickson and Renee Conroy ("Plaintiffs") request that the Court enter partial summary judgment that Defendants Merchants Credit Corporation, Jason Woehler and Erik Bakke ("Merchants," "Woehler" and "Bakke," and collectively "Defendants") are liable to Plaintiffs for Defendants' violations of the venue provision of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692i. Plaintiffs seek this relief pursuant to Federal Rule of Civil Procedure 56, based on the undisputed facts in the record and as a matter of law, as set forth below.

PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON LIABILITY AS  
TO DEFENDANTS MERCHANTS CREDIT  
CORPORATION, JASON WOEHLE AND  
ERIK BAKKE (NO. C15-1012-JCC) – 1

Columbia Legal Services  
101 Yesler Way, Suite 300  
Seattle, WA 98104  
(206) 287-9661

## **II. STATEMENT OF UNDISPUTED FACTS**

Plaintiff Theresa Mosby. On February 4, 2015, Defendants filed a collection lawsuit in the Issaquah (East) Division of King County District Court (“KCDC”) (Case No. 153-04966) against Plaintiff Theresa Mosby, who resided at the time at 2511 S. 248th Street, B16, Kent, Washington, which is not in the KCDC East Division in Issaquah. Declaration of Matthew Geyman for Plaintiffs’ Motion for Partial Summary Judgment on Liability as to Defendants Merchants Credit Corporation, Jason Woehler and Erik Bakke (“Geyman Decl.”), Ex. A (Case Cover Sheet, Summons and Complaint). Defendants contend that Ms. Mosby was served at that address on February 8, 2015. *Id.*, Ex. B & C (Declaration of Service and Declaration of Anthony Hermansen re Service of Process). The Case Cover Sheet alleges that a debt is owed by Ms. Mosby for “goods and services” and the Complaint alleges an “amount remains unpaid despite demand” for “certain goods and services”; they do not allege a breach of any contract between Ms. Mosby and the creditors who assigned the claims to Merchants for collection. *Id.*, Ex. A.

Plaintiff Rebecca Foutz. On January 7, 2015, Defendants filed a collection lawsuit in the Issaquah (East) Division of KCDC (Case No. 153-04567) against Plaintiff Rebecca Foutz, who resided at the time at 5234 University Way N.E., Apt. 103, Seattle, Washington, which is not in the KCDC East Division in Issaquah. Geyman Decl., Ex. D (Case Cover Sheet, Summons and Complaint). Ms. Foutz was served at that address on January 14, 2015. *Id.*, Ex. E (Declaration of Service). The Case Cover Sheet alleges that a debt is owed by Ms. Foutz for “goods and services” and the Complaint alleges an “amount remains unpaid despite demand” for “certain goods and services”; they do not allege a breach of any contract between Ms. Foutz and the creditor who assigned the claim to Merchants for collection. *Id.*, Ex. D. When Defendants

1 subsequently filed a motion for default judgment in the KCDC action, there was no claim that  
 2 the motion was based on any contract between Ms. Foutz and the assignor. *Id.*, Ex. F (Motion,  
 3 Declaration and Order for Default Judgment).

4 Plaintiff Marilynn Cormier. On January 8, 2014, Defendants filed a collection lawsuit in  
 5 the Issaquah (East) Division of KCDC (Case No. 143-04645) against Plaintiff Marilynn Cormier,  
 6 who resided at the time at 7164 18th Avenue S.W., Seattle, Washington, which is not in the  
 7 KCDC East Division in Issaquah. Geyman Decl., Ex. G (Case Cover Sheet, Summons and  
 8 Complaint). Ms. Cormier was served at that address on January 14, 2014. *Id.*, Ex. H (Declaration  
 9 of Service). The Case Cover Sheet alleges that a debt is owed by Ms. Cormier for “goods and  
 10 services” and the Complaint alleges an “amount remains unpaid despite demand” for “certain  
 11 goods and services”; they do not allege a breach of any contract between Ms. Cormier and the  
 12 creditors who assigned the claim to Merchants for collection. *Id.*, Ex. G. When Defendants  
 13 subsequently filed a motion for default judgment in the KCDC action, there was no claim that  
 14 the motion was based on any contract between Ms. Cormier and the assignors. *Id.*, Ex. I (Motion,  
 15 Declaration and Order for Default Judgment).

16 Plaintiff Kelsey Erickson. On June 10, 2015, Defendants filed a collection lawsuit in the  
 17 Issaquah (East) Division of KCDC (Case No. 153-06068) against Plaintiff Kelsey Erickson, who  
 18 resided at the time at 731 5th Avenue S., Apt. 28, Kent, Washington, which is not in the KCDC  
 19 East Division in Issaquah. Geyman Decl., Ex. J (Case Cover Sheet, Summons and Complaint).  
 20 Ms. Erickson was served at that address on June 15, 2015. *Id.*, Ex. K (Declaration of Service).  
 21 The Case Cover Sheet alleges that a debt is owed by Ms. Erickson for “goods and services” and  
 22 the Complaint alleges an “amount remains unpaid despite demand” for “certain goods and  
 23 services”; they do not allege a breach of any contract between Ms. Erickson and the creditors  
 24

1 who assigned the claim to Merchants for collection. *Id.*, Ex. J.

2 Plaintiff Renee Conroy. On January 10, 2013, Defendants filed a collection lawsuit in the  
3 Issaquah (East) Division of KCDC (Case No. 133-10309) against Plaintiff Renee Conroy, who  
4 resided at the time at 3111 S. Graham Street, Seattle, Washington, which is not in the KCDC  
5 East Division in Issaquah. Geyman Decl., Ex. L (Case Cover Sheet, Summons and Complaint).  
6 Ms. Conroy was served at that address on January 31, 2013. *Id.*, Ex. M (Declaration of Service).  
7 The Case Cover Sheet alleges that a debt is owed by Ms. Conroy for “goods and services” and  
8 the Complaint alleges an “amount remains unpaid despite demand” for “certain goods and  
9 services”; they do not allege a breach of any contract between Ms. Conroy and the creditors who  
10 assigned the claim to Merchants for collection. *Id.*, Ex. L. When Defendants subsequently filed a  
11 motion for default judgment in the KCDC action, there was no claim that the motion was based  
12 on any contract between Ms. Conroy and the assignors. *Id.*, Ex. N (Motion, Declaration and  
13 Order for Default Judgment).

14  
15 On September 24, 2014, Defendants filed a second collection lawsuit in the Issaquah  
16 (East) Division of KCDC (Case No. 143-07775) against Ms. Conroy, who still resided at 3111 S.  
17 Graham Street, Seattle, Washington, which is not in the KCDC East Division in Issaquah.  
18 Geyman Decl., Ex. O (Case Cover Sheet, Summons and Complaint). Ms. Conroy was served at  
19 that address on September 27, 2014. *Id.*, Ex. P (Declaration of Service). The Case Cover Sheet  
20 alleges that a debt is owed by Ms. Conroy for “goods and services” and the Complaint alleges an  
21 “amount remains unpaid despite demand” for “certain goods and services”; they do not allege a  
22 breach of any contract between Ms. Conroy and the creditors who assigned the claim to  
23 Merchants for collection. *Id.*, Ex. O. When Defendants subsequently filed a motion for default  
24 judgment in the KCDC action, there was no claim the motion was based on any contract between  
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Ms. Conroy and the assignors. *Id.*, Ex. Q (Motion, Declaration and Order for Default Judgment).

On September 9, 2015, Defendants filed a third collection lawsuit in the Issaquah (East) Division of KCDC (Case No. 153-06806) against Ms. Conroy, who still resided at 3111 S. Graham Street, Seattle, Washington, which is not in the KCDC East Division in Issaquah. Geyman Decl., Ex. R (Case Cover Sheet, Summons and Complaint). Ms. Conroy was served at that address on October 12, 2015. *Id.*, Ex. S (Declaration of Service). The Case Cover Sheet alleges that a debt is owed by Ms. Conroy for “goods and services” and the Complaint alleges an “amount remains unpaid despite demand” for “certain goods and services”; they do not allege a breach of any contract between Ms. Conroy and the alleged creditors who assigned the claim to Merchants for collection. *Id.*, Ex. R.

### **III. STATEMENT OF ISSUES**

Whether the Court should enter an order of partial summary judgment on liability in favor of Plaintiffs against Defendants for violating the venue provision of the FDCPA, 15 U.S.C. § 1692i.

### **IV. EVIDENCE RELIED UPON**

Plaintiff relies upon the Declaration of Matthew Geyman and all exhibits attached to the declaration, as well as all documents and pleadings on file with the Court in this matter.

### **V. AUTHORITY**

#### **A. Summary Judgment Standards.**

Summary judgment is appropriate if there is “no genuine dispute as to any material fact” as to a claim, or for purposes of this Motion, “part of each claim,” and “the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). As the moving parties, Plaintiffs bear the

initial burden of explaining why there is no genuine issue of material fact with respect to the part  
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 Seattle, WA 98104  
 (206) 287-9661

1 of the claim or claims for which partial summary judgment is sought – here, Defendants’ liability  
 2 under the FDCPA. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548 (1986). The  
 3 burden then shifts to Defendants as the nonmoving parties to demonstrate a genuine issue of  
 4 material fact that precludes summary judgment. *Celotex*, 477 U.S. at 324. As the parties  
 5 opposing summary judgment, Defendants must go beyond the pleadings and set forth specific  
 6 facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby,*  
 7 *Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505 (1986); *Matsushita Electric Industrial Co. Ltd. v. Zenith*  
 8 *Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). If the Court concludes that Defendants  
 9 have failed to establish a genuine issue of material fact as to their liability under the FDCPA and  
 10 that Plaintiffs are entitled to partial summary judgment on liability as a matter of law, the Court  
 11 should enter partial summary judgment as to liability on Plaintiffs’ FDCPA claim, with the issue  
 12 of damages and other relief reserved for trial.  
 13

14 **B. The Court Should Grant Partial Summary Judgment as to Liability on Plaintiffs’**  
 15 **FDCPA Claim.**

16 “In enacting the FDCPA, Congress sought to counter the abusive, deceptive and unfair  
 17 debt collection practices sometimes used by debt collectors against consumers.” *Turner v. Cook*,  
 18 362 F.3d 1219, 1226 (9th Cir. 2004) (citing 15 U.S.C. § 1692(a)); *see also Wilson v. Quadramed*  
 19 *Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (noting that Congress enacted the FDCPA “to eliminate  
 20 abusive debt collection practices which contribute to the number of personal bankruptcies, to  
 21 marital instability, to the loss of jobs, and to invasions of individual privacy . . . [and] to  
 22 guarantee that consumers would receive adequate notice of their rights under the law”). To serve  
 23 this remedial purpose, “the FDCPA broadly enumerates several practices considered contrary to  
 24 these goals, and forbids debt collectors from taking such action.” *Sprinkle v. SB&C Ltd.*, 472

1 F. Supp. 2d 1235, 1245 (W.D. Wash. 2006). The FDCPA is a strict liability statute that must be  
 2 construed liberally in favor of the debtor. *Clark v. Capital Credit & Collection Servs., Inc.*, 460  
 3 F.3d 1162, 1175-76 (9th Cir. 2006). Plaintiffs do not need to prove that Defendants intentionally,  
 4 knowingly or willfully violated the FDCPA's requirements. *Hunt v. Check Recovery Sys., Inc.*,  
 5 478 F. Supp. 2d 1157, 1169 (N.D. Cal. 2007).

6 A FDCPA violation is established if (1) the plaintiff is a "consumer," (2) the alleged  
 7 obligation is a "debt," (3) the action complained of was by a "debt collector," and (4) either the  
 8 defendant's acts or omissions were prohibited by the FDCPA, or the defendant failed to take an  
 9 action required by the FDCPA. *See* 15 U.S.C. §§ 1692a(3), (5) & (6). Here, as detailed below,  
 10 there is no genuine issue of material fact as to any of these elements, and the Court should find  
 11 that Defendants are liable for violating the FDCPA.  
 12

### 13 **1. Plaintiffs Are "Consumers" as Defined by the FDCPA.**

14 Under the FDCPA, the term "consumer" means "any natural person obligated or  
 15 allegedly obligated to pay any debt." 15 U.S.C. § 1692a(3). There is no dispute that Plaintiffs are  
 16 natural persons.  
 17

### 18 **2. Defendants Collected "Debts" as Defined by the FDCPA.**

19 The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay  
 20 money arising out of a transaction in which the money, property, insurance or services which are  
 21 the subject of the transaction are primarily for personal, family or household purposes[.]" 15  
 22 U.S.C. § 1692a(5). The debts that Plaintiffs allegedly incurred were alleged debts for medical  
 23 services. *See* Geyman Decl., Exhs. A, D, G, J, L, O & R (Complaints against Plaintiffs alleging  
 24 debts allegedly owed to various medical providers). Thus there is no dispute that by filing the  
 25 debt collection actions against Plaintiffs, Defendants were attempting to collect "debts" as  
 26



defined by 15 U.S.C. § 1692a(6). *See also Creighton v. Emporia Credit Serv., Inc.*, 981 F. Supp. 411, 414 (E.D. Va. 1997) (holding that alleged obligation to pay for hospital services was a “debt” for purposes of the FDCPA).

### 3. Defendants Are “Debt Collectors” as Defined by the FDCPA.

A “debt collector” as defined in the FDCPA is “any person who uses any instrumentality of interstate commerce or the mail . . . who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). Debt collectors may include attorneys litigating cases on behalf of their clients and “who ‘regularly’ engage in consumer debt collection activity, even when that activity consists of litigation.” *Heintz v. Jenkins*, 514 U.S. 291, 297, 115 S.Ct. 1489 (1995).

Here, Defendant Merchants, through its collection attorneys, Defendants Woehler and Bakke, filed debt collection actions against Plaintiffs, and it cannot be disputed that in so doing Defendants were each acting as debt collectors under the FDCPA. *Heintz*, 514 U.S. at 297.

### 4. Defendants Violated the FDCPA’s Venue Provision by Bringing the Collection Action Against Plaintiffs in the Wrong Venue.

The FDCPA requires that “[a]ny debt collector who brings any legal action on a debt against any consumer shall . . . bring such action only in the judicial district or similar legal entity . . . (A) in which such consumer signed the contract sued upon; or (B) in which such consumer resides at the commencement of the action.” 15 U.S.C. § 1692i. For FDCPA purposes, the “judicial district or similar legal entity” in which debtor defendants reside is the “smallest geographic area that is relevant for determining venue in the court system in which the case is filed.” *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014), *cert. denied*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 756 (2014); *see also* Order Denying Motion to Dismiss (Dkt. No. 26) at 4 (same,



1 following *Suesz*).

2 This Court has already held that “the *divisions* of the King County District Court  
3 constitute judicial entities for the purposes of § 1692i.” *See* Order Denying Motion to Dismiss  
4 (Dkt. No. 26) at 3-4 (emphasis added); *see also* Order on Motions to Dismiss (Dkt. No. 44) at 3;  
5 Order on Motions to Dismiss (Dkt. No. 162) at 4-5.

6 It is undisputed that Plaintiffs were not sued in the “judicial district or similar legal entity.  
7 . . in which [they] reside[d] at the commencement of the action. The lawsuits were filed, and  
8 Plaintiffs were served with the Summonses and Complaints, in the Issaquah (East) Division of  
9 KCDC in which they did not reside. Further, the collection actions Defendants brought against  
10 Plaintiffs were not for breach of contract; thus, there were no contracts “sued upon.” *See*  
11 Geyman Decl., Exhs. A, D, G, J, L, O & R (case cover sheets and complaints against Plaintiffs  
12 alleging debts allegedly owed to various medical providers for “goods and services” rendered,  
13 none of which assert a claim for breach of contract) & *id.*, Exhs. F, I, N & Q (motions and orders  
14 for default judgments against Plaintiffs in which no contracts were submitted and there was no  
15 claim by Defendants that the default judgments were based on any contracts between Defendants  
16 and the assignors). *See Discover Bank v. Bridges*, 154 Wn. App. 722, 727, 226 P.3d 191 (2010)  
17 (reversing summary judgment, holding that defendant could not be held liable for breach of  
18 contract without evidence of alleged contract); *Unifund, CCR, LLC v. Elyse*, 195 Wn. App. 110,  
19 115, 382 P.3d 1090 (2016) (failure of creditor to introduce evidence of written contract with  
20 debtor precluded entry of judgment for creditor on breach of contract claim); King County  
21 District Court Local Rule 55(3) (“Any party seeking a default judgment shall submit at least the  
22 following [:] ... In causes of action based upon all contracts: sworn testimony to prove  
23 performance may be required, together with filing of a copy of the contract, if written[.]).  
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Seattle, WA 98104  
(206) 287-9661

**V. CONCLUSION**

For all of the foregoing reasons, Plaintiffs request that the Court enter an order of partial summary judgment in their favor on liability against the Defendants, based on their violations of the venue provision of the FDCPA, 15 U.S.C. § 1692i.

DATED: March 20, 2017

COLUMBIA LEGAL SERVICES

ANTOINETTE M. DAVIS LAW, PLLC

By /s/ Matthew Geyman

Matthew Geyman, WSBA #17544  
Eulalia Sotelo, WSBA #41407  
Kimberlee L. Gunning, WSBA #35366  
101 Yesler Way, Suite 300  
Seattle, WA 98104  
Phone: 206-287-9661 / Fax 206-382-3386

By /s/ Antoinette M. Davis

Antoinette M. Davis, WSBA #29821  
119 – 1st Ave. S., Ste. 500  
Seattle, WA 98104  
Phone: 206-486-1011  
Fax: 206-905-5910

BERRY & BECKETT, PLLP

WILLIAMSON AND WILLIAMS, LLC

By /s/ Guy W. Beckett

Guy W. Beckett, WSBA #14939  
1708 Bellevue Avenue  
Seattle, WA 98122  
Phone: 206-441-5444  
Fax: 206-838-6346

By /s/ Rob Williamson

Kim Williams, WSBA #9077  
Rob Williamson, WSBA #11387  
2239 W Viewmont Way W  
Seattle, WA 98199  
Phone: 206-294-3085

Counsel for Plaintiffs Theresa Mosby, Rebecca Foutz, Marilynn Cormier, Kelsey Erickson and Renee Conroy

**CERTIFICATE OF SERVICE**

On March 20, 2017, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification and deliver such filing to the following counsel of record:

Marc Rosenberg  
Jonathan J. Loch  
LEE SMART, P.S., INC.  
1800 One Convention Place  
701 Pike Street  
Seattle, WA 98101  
(206) 624-7990  
[mr@leesmart.com](mailto:mr@leesmart.com)  
[jjl@leesmart.com](mailto:jjl@leesmart.com)

Janine Joly  
Kimberly Y. Frederick  
KING COUNTY PROSECUTING ATTORNEY'S OFFICE  
500 Fourth Avenue, Suite 900  
Seattle, WA 98104  
(206) 296-9015  
[janine.joly@kingcounty.gov](mailto:janine.joly@kingcounty.gov)  
[kimberly.frederick@kingcounty.gov](mailto:kimberly.frederick@kingcounty.gov)

Kathleen A. Nelson  
Sarah E. Demaree  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
1111 Third Avenue, Suite 2700  
Seattle, WA 98101  
(206) 436-2020  
[Kathleen.nelson@lewisbrisbois.com](mailto:Kathleen.nelson@lewisbrisbois.com)  
[Sarah.demaree@lewisbrisbois.com](mailto:Sarah.demaree@lewisbrisbois.com)

Jeffrey Edward Bilanko  
GORDON & REES LLP  
701 Fifth Avenue, Suite 2100  
Seattle, WA 98104  
(206) 695-5100  
[jbilanko@gordonrees.com](mailto:jbilanko@gordonrees.com)

Christopher E. Hawk  
David W. Cramer  
GORDON & REES LLP  
121 SW Morrison, Suite 1575  
Portland, OR 97204  
(503) 222-1075  
[chawk@gordonrees.com](mailto:chawk@gordonrees.com)  
[dcramer@gordonrees.com](mailto:dcramer@gordonrees.com)

Jason L. Woehler, Attorney at Law  
705 Second Avenue, Suite 605  
Seattle, WA 98104  
(206) 622-0232  
[jlwoehler@aol.com](mailto:jlwoehler@aol.com)

James Donald Nelson  
Natalie Moore  
Shaina Rhodes Johnson  
BETTS PATTERSON MINES  
One Convention Place, Suite 1400  
701 Pike Street  
Seattle, WA 98101  
(206) 292-9988  
[jnelson@bpmlaw.com](mailto:jnelson@bpmlaw.com)  
[nmoore@bpmlaw.com](mailto:nmoore@bpmlaw.com)  
[sjohnson@bpmlaw.com](mailto:sjohnson@bpmlaw.com)

Robert E. Sabido  
COSGRAVE VERGEER KESTER  
500 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, OR 97204  
[rsabido@cosgravelaw.com](mailto:rsabido@cosgravelaw.com)

Daniel A. Edelman  
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC  
20 S. Clark Street, Suite 1500  
Chicago, IL 60603  
(312) 739-4200  
[dedelman@edcombs.com](mailto:dedelman@edcombs.com)

1 James A. Sturdevant  
2 LAW OFFICES OF JAMES STURDEVANT  
3 1119 North Commercial Street, Suite 920  
4 Bellingham, WA 98225  
5 (360) 671-2990  
6 [sturde@openaccess.org](mailto:sturde@openaccess.org)

7 /s/ Matthew Geyman  
8 Matthew Geyman, WSBA #17544  
9  
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